

## REMARKS

The Office Action of January 18, 2011, has been received and reviewed.

Claims 1, 2, 7-16 and 18-23 were previously pending and under consideration in the above-reference application. Each of claims 1, 2 17-16 and 18-22 has been rejected.

Claim 23 is apparently drawn to allowable subject matter.

Independent claims 1 and 20 have been amended. The revisions to these claims are made without prejudice or disclaimer.

Reconsideration of the above-referenced application is respectfully solicited.

### Rejections under 35 U.S.C. § 102(e)

The Office has rejected claims 1, 2, 7-16 and 18-22 under 35 U.S.C. § 102(e) for being directed to subject matter that is purportedly anticipated by the subject matter described in U.S. Patent Application Publication 2002/0044942A1 of Dopson (hereinafter “Dopson”).

The Office’s indication that the 35 U.S.C. § 102(e) rejection based on Dopson may be overcome by filing an affidavit in accordance with the requirements 37 C.F.R. § 1.131 is gratefully acknowledged. Such an affidavit will be prepared and executed when all further issues in the above-referenced application have been resolved.

### Rejections under 35 U.S.C. § 103(a)

Claims 1, 2, 7-16 and 18-22 have also been rejected under 35 U.S.C. § 103(a) for being drawn to subject matter that is purportedly unpatentable over the subject matter taught by U.S. Patent 5,080,895 to Tokoro (hereinafter “Tokoro”), in view of teachings from U.S. Patent 5,840,700 to Kirkpatrick (hereinafter “Kirkpatrick”).

There are several requirements for establishing a *prima facie* case of obviousness against the claims of a patent application. All of the limitations of the claim must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 985 (CCPA 1974); *see also* MPEP § 2143.03. Even then, a claim “is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.” *KSR Int’l Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396

(2007). The Office must also establish that one of ordinary skill in the art would have been able to predict that the purported modification or combination of reference teachings would have been successful. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). In order to demonstrate such predictability, the Office must articulate some “reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, quoting *In re Kahn*, 441, F.3d 977, 988 (Fed. Cir. 2006). That reason must be found in the prior art, common knowledge, or derived from the nature of the problem itself, and not based on the Applicant’s disclosure. *DyStar Textilfarben GmbH & Co. Deutschland KG v. C. H. Patrick Co.*, 464 F.3d 1356, 1367 (Fed. Cir. 2006). A mere conclusory statement that one of ordinary skill in the art would have been motivated to combine or modify reference teachings will not suffice. *KSR* at 1396.

Independent claims 1 and 20 are both directed to methods for causing treated animals to elicit T cell mediated immune responses. These methods include administering an extract of an egg to a treated animal. The extract, which consists of egg yolk, includes transfer factor. The transfer factor is specific for at least one pathogen that is not normally present in an environment in which the source animal lives.

The teachings of Tokoro relate to a “transfer factor-like component” generated by chickens in response to three antigens that are not normally present in environments in which chickens live. As has already been established, none of those three antigens actually causes a chicken to produce transfer factor that ends up in the chicken’s eggs.

Although Tokoro provides a lengthy list of other antigenic agents that may cause a source animal, specifically a chicken, to produce a transfer factor-like component, Tokoro does not provide any indication that any of the listed antigens meet the requirements of amended independent claims 1 and 20; *i.e.*, that: the antigens comprise at least one antigenic agent that is not normally present in an environment in which the source animal lives; and that transfer factor produced by the source animal be specific for that at least one antigenic agent. Nor does any of the art that has been cited by the Office suggest that a composition that includes transfer factor specific for at least one antigenic agent not normally present in an environment in which a source animal lives may be administered to another type of animal.

The teachings of Kirkpatrick relate to techniques for isolating transfer factors with certain specificities. Kirkpatrick lacks any teaching or suggestion that transfer factor may be obtained from an egg of a source animal. In addition, like Tokoro, Kirkpatrick provides no teaching or suggestion of a method in which an egg extract that includes transfer factor specific for at least one antigenic agent that is not normally present in an environment in which the source animal lives is administered to another type of animal.

For these reasons, it is respectfully submitted that the art that has been relied upon by the Office in rejecting independent claims 1 and 20 does not provide any basis for predicting the subject matter recited by either of these claims, as amended. Thus, a *prima facie* case of obviousness has not been established against either of these claims or against any of their dependent claims.

Accordingly, it is respectfully submitted that, under 35 U.S.C. § 103(a), each of claims 1, 2, 7-16 and 18-22 is drawn to subject matter that is allowable over teachings from Tokoro and Kirkpatrick. Withdrawal of the 35 U.S.C. § 103(a) rejections of these claims is, therefore, respectfully solicited.

### **Allowable Subject Matter**

The indication that claim 23 is drawn to allowable subject matter is noted with appreciation. Claim 23 has not yet been amended to independent form, as independent claim 1, from which claim 23 depends, is believed to be allowable.

**CONCLUSION**

It is respectfully submitted that each of claims 1, 2, 7-16 and 18-23 is allowable. An early notice of the allowability of each of these claims is respectfully solicited, as is an indication that the above-referenced application has been passed for issuance. If any issues preventing allowance of the above-referenced application remain which might be resolved by way of a telephone conference, the Office is kindly invited to contact the undersigned attorney.

Respectfully Submitted,

/brick g. power/

Brick G. Power

Registration Number 38,581

Attorney for Applicant

**DURHAM, JONES & PINEGAR**

INTELLECTUAL PROPERTY LAW GROUP

111 East Broadway, Suite 900

Salt Lake City, Utah 84110

Telephone: (801) 415-3000

BGP/ko

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